

**BOARD OF APPEALS CASE NO. 5320**

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**BEFORE THE**

**APPLICANTS: Clyde & Oleita Hall,  
Angela & Mitchell Winslow**

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**ZONING HEARING EXAMINER**

**REQUEST: Expansion of a non-  
conforming building and further reduce  
the rear yard setback; 3525 Conowingo  
Road, Street**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 1/22/03 & 1/29/03**

**HEARING DATE: August 20, 2003**

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**Record: 1/24/03 & 1/31/03**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Clyde & Oleita Hall and Angela & Mitchell Winslow, are requesting an expansion of a non-conforming building, pursuant to Section 267-21 of the Harford County Code, to enlarge an existing non-conforming building and further reduce the rear yard setback in a B3 District.

The subject parcel is located at 3525 Conowingo Road, Street, MD 21154, on the southeast side of the intersection of Conowingo and Priestford Roads (US Route 1 and MD Route 136), in the Fifth Election District, and is more particularly identified on Tax Map 27, Grid No. 1C, Parcel 261. The property contains approximately 1.04 acres

The August 20, 2003, hearing in this case was a continuation of the hearing originally convened on March 19, 2003 before Hearing Examiner William Casey. Some testimony was taken at the first hearing; however, the case was then continued so that the Applicants could file a revised site plan. Prior to the August 20, 2003 hearing, the undersigned Hearing Examiner reviewed a transcript of testimony presented on March 19, 2003.

The evidence presented on March 19, 2003, is as follows. The Applicant Clyde Hall testified that he, his wife, Oleita Hall, his daughter, Angela M. Winslow, and his son-in-law, Mitchell Winslow, are the owners of the subject property. They have operated a furniture store on the subject site for approximately 11 years. Mr. Hall also testified that the existing non-conforming structure was originally built by his uncle, approximately 40 years ago.

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The witness identified the properties located adjacent to the existing building. The parcel to the north was recently purchased by the Rising Sun Bank. The parcel across the street to the northwest is occupied by a Super WAWA store, and the property to the south, behind the subject site, is farmland.

Mr. Hall testified that the Applicants were recently denied a zoning request which would have enabled them to use a building several miles away for warehousing furniture sold in connection with their business. As a result, they now are requesting to expand the existing non-conforming building by approximately 5,000 square feet to provide additional warehouse space at the subject site. According to the witness, the Applicants intend to remove several storage sheds, and a mobile home adjacent to the existing non-conforming building if the requested expansion is granted.

He stated that he does not foresee any impact on traffic on traffic in the vicinity if the proposed expansion is granted. Rather, he indicated that more traffic was created as a result of utilizing the other building for warehouse purposes, because trucks were then needed transport merchandise between the two sites. If the expansion is granted, the deliveries will come directly to the subject property, and the items will remain there until sold, thereby reducing the amount of truck traffic to the site. In addition, the witness testified that trucks will continue to utilize the existing driveway, which has more than adequate site distance.

Mr. Hall also testified at the first hearing, that when the application was submitted, the Applicants planned to enlarge the existing building. However, their architect subsequently determined that the additional weight would put too much strain on the existing roof. It was, therefore, decided that the best course of action would be to build a new freestanding building approximately 3 feet from the existing structure, and to connect the two buildings with a covered walkway. Because this design change was not reflected on the site plan submitted with the application, the Applicants were granted a continuance in order to file a revised site plan.

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At the hearing on August 20, 2003, Mr. Hall continued his testimony at the point where he had left off at the prior hearing. He indicated that the mobile home, located to the east of the existing building, had now been removed from the site and that the Applicants also planned to remove the two small sheds on the eastern portion of the property prior to construction. However, the two mobile homes located northeast of the subject building, which are currently used for storage, will remain at the site. Mr. Hall stated that with the exception of the aforesaid corrections, all testimony presented at the March 19, 2003 hearing remains true and accurate. In addition, he verified that the original application had not changed in any way except for the submission of a revised site plan.

The witness testified that the subject building fronts on Conowingo Road. The rear wall of the building is 29 feet from the rear setback line, and that the current minimum rear yard setback is 40 feet. The new building will be 13 feet from the rear property line at its closest point, further reducing the rear yard setback; however, the property behind the subject parcel is farmland, and it does not contain any residences. The closest homes are over 1/4 mile away from the property line.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune verified that the Department recommended approval of the subject request in its July 24, 2003 Staff Report. According to the witness, the requested expansion will not require any variances. He stated that the existing building is 29 feet from the front property line, and that the original minimum setback was 30 feet. However, the building became non-conforming with the enactment of new Code provisions which required a minimum 40-foot setback. Mr. McClune also testified that because the proposed new building will be connected to the existing structure by a covered walkway, the two structures will actually be considered one building. Hence, the only issue to be decided pursuant to the subject request is whether the non-conforming structure can be enlarged.

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According to the witness, the Department of Planning and Zoning found that all provisions of Section 267-21 can be met if the subject application is approved. He indicated that the existing use of the subject parcel will not change if the requested expansion is granted, and that retail and warehousing use is permitted as a matter of right in a B3 District. He also testified that the requested expansion will not exceed 50% of the square footage which existed at the creation of the non-conformity. The gross square footage of the enclosed portion of the existing building was 10,800 square feet when the nonconformity was created. Its current gross square footage is 11,580 square feet. The intervening 780 square foot increase resulted from the enclosure of an existing porch, pursuant to the decision rendered in case number 4830. According to Mr. McClune, because the aforementioned enclosure did not increase the original footprint of the building, the requested 4,999 square foot expansion does not exceed 50% of the square footage in existence at the creation of the non-conformity. The witness then testified that the height limits in a B3 District are 35 feet, and that the requested expansion will not exceed these restrictions. He further stated that the requested expansion will have no impact on the intensity of the current use.

Mr. McClune also indicated that after consideration of all factors set forth in Section 267-9I of the Harford County Code, the Department had determined that the proposed use would not have any adverse impact on adjacent properties. In addition, he testified that the proposed expansion will not have any affect on traffic in the vicinity of the subject property. According to the witness, U.S. Route 1 is an arterial road, which supports a high volume of vehicular traffic. Trucks are common on this road and the additional truck traffic generated by the proposed expansion will not cause any adverse impact to traffic in the area.

No witnesses appeared in opposition to the requested variance.

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### **CONCLUSION**

The Applicants, Clyde C. & Oleita Hall and Angela M. & Mitchell Winslow, are requesting an expansion of a non-conforming building, pursuant to Section 267-21 of the Harford County Code, to enlarge an existing non-conforming building and further reduce the rear yard setback in a B3 District.

The following is a review of applicable code sections, and the Hearing Examiner's findings (*in italics*) regarding each code provision.

Section 267–21 of the Harford County Code provides:

The Board may authorize the extension or enlargement of a non-conforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less restricted and more intense use.

*The Hearing Examiner finds that the proposed construction would not change the existing use of the property.*

- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.

*The Hearing Examiner finds that the proposed extension does not exceed fifty percent (50%) of the gross square footage in use when the non-conformity was created. The enclosed portion of the subject building was originally 10,800 square feet. An existing porch was later enclosed, increasing the size of the enclosed portion of the building to 11,580 square feet. However, because this enclosure did not increase the footprint of the original structure, the requested 4,999 square foot expansion, will not exceed 50% of the square footage in existence at the creation of the non-conformity.*

- C. The enlargement or extension does not violate the height or coverage regulations for the district.

*The Hearing Examiner adopts the finding of the Department of Planning and Zoning that the proposed expansion would not violate the height or coverage regulations for the district.*

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- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.

*The Hearing Examiner finds that the proposed expansion will not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood. The subject property is surrounded by business uses and farmland. The closest residence is located over 1/4 mile away from the non-conforming building. U.S. Rt. 1 is a heavily-traveled road, which supports a significant volume of truck traffic. The proposed expansion will generate only 2 to 3 deliveries on Mondays, and 3 to 4 deliveries during the remainder of the week. Delivery trucks will utilize the existing driveway, which has ample site distance.*

- E. The limitations, guides and standards set forth in Section 267-9I, Limitations, Guides and Standards, are considered by the Board.

*The provisions contained in Section 267-9I are discussed infra.*

Section 267-9I of the Harford County Code provides:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

*The Hearing Examiner finds that the request would have no impact on persons living or working in the area of the subject property.*

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

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*For the reasons previously stated, the Hearing Examiner finds that the proposed expansion would not adversely affect traffic conditions on U.S. Rt .1 (Conowingo Rd.)*

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

*The Hearing Examiner finds that expansion of the existing structure would have no impact on the growth of the neighborhood or the community, and no fiscal impact on the county.*

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

*The proposed construction would not cause any odors, dust, gas, smoke, fumes, vibration, glare or noise.*

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

*The proposed construction would have no impact on public facilities, or on the County's ability to supply such services.*

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

*The Hearing Examiner finds that the operation of a furniture store and warehouse is a permitted use within the B3 District, and that the requested expansion will not adversely impact adjacent properties or traffic in the vicinity of the subject property.*

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

*Not applicable to the request.*

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- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

*The Harford County Code allows for the expansion of nonconforming buildings if all required provisions set forth therein are met.*

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

*Not applicable to the request.*

- (10) The preservation of cultural and historic landmarks.

*Not applicable to the request.*

Having found that the subject request meets or exceeds all requirements of both Section 267-21 and Section 267-9I, the Hearing Examiner recommends approval of Applicants' request for expansion of a non-conforming building, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the existing sheds to the rear of the non-conforming building be removed.

Date SEPTEMBER 22, 2003

Rebecca A. Bryant  
Zoning Hearing Examiner